

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/09/2002

CORAM

HON'BLE MR.JUSTICE A.K. RAJAN

O.A.NO.405 of 2002

in

ELECTION PETITION NO.3 of 2000

V.Vetriselvan,  
No.40A, Krishnappa lay-out,  
Krishnagiri,  
Dharmapuri District. .. Applicant

-Vs-

S.M. Raju .. Respondent

!For Petitioner : Mr. P.Wilson

^For Respondents : Mr. T.V.Ramanujan,  
Senior Counsel for  
M/s.C.Jagadeesh.

ORIGINAL APPLICATION NO.405 of 2002

in

ELECTION PETITION NO.3 of 2000

A.K. RAJAN, J.

:ORDER

The Election Petition No.3 of 2000 has been filed by the respondent herein, challenging the election of the applicant in the Parliamentary election held on 11.9.1999 and declared on 6.10.1999. The present application has been filed to reject the Election Petition No.3 of 20 00 as it does not furnish any cause of action and totally lacks material facts.

2. In the affidavit, filed in support of the application, it is stated as follows:

(a) The respondent has filed the Election Petition on the ground that excess expenditure has been incurred by the candidate and his election agent; to attract Section 153(6) of the Representations of People Act, 1950, the applicant has to plead all the facts to show the authorisation or undertaking of reimbursement by the returned candidate or the election agent; the expenditure incurred either before the election or after the election cannot

be taken into consideration. Election applicant has to plead the exact date of the expenditure; the essence of the matter is that whose money is that has been spent and not that whose hand spent the money; Well wishers and enemies of rival candidates sometime incur expenditure without the consent of the candidate and even without his knowledge.

b) Further, the election applicant had not verified that which paragraph of the election petition are based on his knowledge, which paragraphs are based on his information and which paragraphs are based on his belief; the affidavit should be in accordance with Form-25 and in accordance with Rule 94(A). In the verification done in the election petition, certain paragraphs are verified as true to his knowledge and certain paragraphs are true to his information; however, in the affidavit filed in support of the election petition, the respondent mingles all the paragraphs under one heading and has verified that all those paragraphs are true to his knowledge and information. This is not in compliance of Rule 94-A of the Conduct of Election Rules.

c) The election petition filed on the grounds of corrupt practice is of quasi-criminal in nature; therefore, it should be proved like a criminal case. The object of swearing affidavit in the prescribed form is to ensure that the allegations of corrupt practice are not made lightly, but ensures the responsibility thereafter. The Supreme Court has also held that fishing and roving enquiry should be avoided.

d) The election petition lacks material facts. The averment that returned candidate and his election agent incurred expenses in connection with cut-outs is vague. It is stated that cut-outs were displayed throughout the constituency; neither the size of the cut-outs nor the places where they were displayed, the nature of painting, name of the artist are mentioned; when these material facts not being pleaded, the election applicant cannot substantiate the same in evidence. It is not stated whose cut-out were displayed, whether the cut-out of the leader of D.M.K. party or of the candidate himself or of the leader of the alliance party; it is not even pleaded how many cut-outs were installed. The break-up figures for the alleged expenses are not given. Under these circumstances, the returned candidate is not in a position to meet these allegations; hence, they lack material facts.

(e) It is alleged that vehicles were used in various panchayat unions. It is alleged in the stereo-typed fashion without specifying the actual expenses incurred. There are no material facts pleaded as to in which routes, the vehicles were put in use. The election applicant has not stated the extent of time and number of days the vehicles were used or whether they were used for the whole day or only during a part of the day; merely pleading the number of the vehicle and the owners' addresses is not sufficient. It is pleaded that the election applicant himself has seen that 52 vehicles were utilised on all the days between 23.8.1999 and 9.9.1999. It is not pleaded as to whether the election applicant has seen the plying of all the 52 autos on all the days; he refers two persons who were alleged to have seen that vehicles were used; these persons could not have seen all the autos running in all the places, especially when one of them is a contesting candidate.

(f) It is further stated that D.M.K. flags throughout the constituency were used and a sum of Rs.8,75,000/- was incurred. It is also

alleged that the flags were purchased in Erode in bulk and the election applicant himself has seen the display of D.M.K. flags. The size of the flag, whether the flags were displayed through sticks or whether they were tied to the electrical poles or wooden poles is not pleaded. It is not even stated from which shop they were purchased, particularly when the election petition alleges that he has personal knowledge of the purchase. Further, dates of purchase also were not given. The number of flags purchased has not been given. A sweeping allegation that Rs.8,75,000/- was spent is not sufficient.

(g) With reference to erection of banners, it is alleged that an amount of Rs.21 lakhs was incurred without giving any details of the banners erected; at least like places where it has been erected and the name of the artist/painter who had prepared the banner and size of the banner should have been stated.

(h) For writing on the wall, it is stated, that a sum of Rs.39 lakhs was incurred. It is only a generalised statement without any particulars.

(i) It is stated that Rs.3,75,000/- was used for advertising in the newspapers both in English and Tamil. The advertisements made by the friends, sympathisers, associations and by the party cannot be taken into account. Election Petition does not specify the actual amount spent, in this regard. Therefore, it lacks material facts.

(j) It is alleged that a sum of Rs.64.59 lakhs was incurred for polling booth expenses at the rate of Rs.5,000/- for each booth. It is not pleaded on which date expenditure was made and the nature of expenditure and how he has arrived that a sum of Rs.5,000/- per booth.

(k) With regard to expenditure incurred for erection of stages and dais, no particulars are given; not even the names of the contractors who erected the stages are pleaded. It has not been specifically pleaded regarding the wall-posters, cut-outs, hand-bills etc. Further, it is not pleaded the sources from which the money received by him to meet out the total expenditure of Rs.2,31,520/-.

Therefore, the Election Petition has to be rejected for want of material aspects.

3. In the counter filed by the Election applicant/ the respondent herein, it is stated that this petition is abuse of process of law and not bonafide. The affidavit filed along with Election Petition is in accordance with Rule 94-A of the Conduct of Election Rules. It is only the substance that counts and not the form. The Election Petition contains material facts and full particulars. According to the Apex Court, any such defect is curable. The allegation that the respondent wanted to have a fishing and roving enquiry is not correct. The Election Petition does not lack material facts. The applicant herein is going into the merits of the case. It is open to him to put it in the cross-examination. The amounts spent by the second respondent in the Election Petition is within his knowledge and it is for him to disclose the details. The other contentions made in the application are argumentative. The averments made in the Election Petition have to be taken as correct for the purpose of deciding the question of maintainability. The counter has already been filed in the Election Petition and it is ripe for trial. Therefore, filing of the application at this point of time is not bonafide. The Supreme Court also held that any mistake in the verification cannot be a ground for dismissing the Election Petition. Further issues have

already been framed. Therefore, it is proved that there are triable issues. Hence, this application is to be dismissed with costs.

4. The counsel appearing for the applicant/second respondent in the Election Petition contended :

I.(1) that the Election Petition lacks material facts. For considering preliminary objection as to whether the Election Petition contains material facts, the Court has to assume that the averments stated in the Election Petition are true and whether these averments disclose any cause of action. The entire Election Petition is devoid of material facts; the averments are vague and without any clarity and the applicant is attempting to conduct fishing and roving enquiry without pleading the material facts. The returned candidate should know the exact charges he has to meet. The charges under corrupt practice is akin to criminal charges, and hence, the standard of proof is like that of a criminal charge. The Supreme Court in *R.P. Moidutty v. P.T. Kunju Mohammad and another* ((2000) 1 Supreme Court Cases 481, has held that,

" .....the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear-cut evidence, wholly credible and reliable, is need to prove beyond doubt the charge of corrupt practice." The averments made in the Election Petition does not satisfy this test and therefore, it lacks material facts.

(2) The counsel for the applicant contended that the election petition in which material facts are not pleaded, is liable to be dismissed in limine; the election petitioner is not permitted to make a roving enquiry. The applicant referred to paras-6,7,8 and 13 of the election petition relating to erection of cut-outs in six assembly constituencies. But the election petitioner failed to state the exact places in which the cut-outs were displayed, the size and nature and the particulars of persons whose cut-outs were displayed are not given; this amounts to non-pleading of material facts. Further, with respect to vehicles used for canvassing, there is only a generalised statement; There are no particulars regarding number of vehicles; where they were used; whether they were used for the whole day or part of the day; whether enquiry was made with the owner of the vehicle are not stated. It is difficult to accept that two named persons, S.M. Madhaiyan of Mathur and M.Natesan of Gangaleri have seen all the 52 vehicles all the time in all the 18 places. Further with respect to display of flags of D.M.K., the pleadings do not contain any particulars regarding size of the flag, whether it was displayed with stick or it was tied with the electrical poles; the name of the shop from which the flags were purchased; the date of purchase have also not been stated. Similarly with respect to displaying of banners, there are no particulars with respect to the date on which the banners were erected prior to announcement of election or not. Materials used for erecting banners, cost of each banner have not been stated. With respect to another item of spending, viz., displaying of banners by writing on the wall. Names of the places where they were displayed, nature and size of the banners were not pleaded. There are no particulars as to whether the advertisements were given by the candidates themselves or by friends or sympathisers; date of publication and expenses incurred thereon. With respect to polling booth expenses of Rs.500/- each for 1 299 booths, name and the persons who received the money from the returned candidates and the time were not stated. With respect to expenses for stay of the then Chief Minister, there are no

particulars regarding places of stay, nature of expenses etc. With respect to erection of stages/dais, again generalised statement has been made; no particulars have been given with respect to the date; The contractor who erected etc. is not mentioned; this amounts to not stating the material facts. Therefore, on this ground alone, election petition is liable to be dismissed.

(3) In support of his contention, the counsel referred to the decision in *Sasana Gowda v. S.B.Amarkhed* (A.I.R. 1992 S.C. 1163), where the Supreme Court has held,

"...the election petition proceedings being of quasi-criminal nature, the allegations in the petition must be pleaded clearly and with full particulars, especially the grounds of corrupt practices cannot be permitted to be tried on the basis of deficient pleadings or by filing applications for production of record to fish out grounds as material which is not part of the pleadings." .....Therefore, the allegation must be specifically pleaded giving material particulars. "

He also refers to the judgment of the Kerala High Court in *Ramachandran v. K.P.Noordeen* (A.I.R. 1988, Kerala 141), wherein it was held,

"A person could approach the Court with an election petition only if he can present before Court item by item each and every corrupt practice and other grounds with exactitude and details. He cannot enlarge the scope of the allegations by later informations and evidence. He must stand or fall on the specific allegations and details pleaded and cannot expect them to be developed by evidence. "

The counsel for the applicant submitted that this position is well settled by authoritative pronouncements of the Supreme Court. What are the material facts has to be determined in each case; and there are fixed norms. He referred to the judgment of the Supreme Court in *Azhar Hussain v. Rajiv Gandhi* (1986 (Supp) S.C.C.315, in which the Supreme Court held that,

"(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. "

That is, the election petition filed by the petitioner shall contain all such materials based on which the Court should be in a position to grant the relief, even if the opposite party does not appear. This is the test that has to be applied to the election petition. When that test is applied, the counsel submitted, that, with respect to corrupt practices alleged, the election petition should contain such full particulars; but by reading of the present election petition, the Court cannot come to the conclusion that illegality as alleged has been established. Therefore, this election petition is devoid of material particulars.

(4) The counsel appearing for the election petitioner/respondent submitted that all the material facts have been pleaded. The material facts are different from material particulars. As per the decision of the Supreme Court, in *V.S. Achuthanandan v. P.J. Francis and another* ((1999) 3 Supreme Court Cases 737, material facts are primary facts disclosing some cause of action. Defect in material particulars can be cured at a later stage by amendment and the petition cannot be dismissed in limine on the ground of such

defect. The pleadings that expenses were incurred for erecting cut-outs, display of flags, display of banners, writing on the walls, advertisements in the newspapers, polling booth expenses etc., are sufficient to constitute material facts. The contention that the averments do not contain full particulars is not correct. The Supreme Court has already laid down what constitutes material facts and what are material particulars. In the decision reported in *Mahendrapal v. Ramdoss Mahanger and others* (2000(1) S.C.C. 261), the Supreme Court has held that material facts means that only basic and preliminary facts which the petitioner bound under law to substantiate are to be pleaded in the election petition. The complete facts which are essentially required are to be pleaded. The parties have to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. All the material particulars are required only for amplification of the material facts. Only failure to plead the material facts leads to an imperfect cause of action. In case, the petition suffering from any deficiency, the Court has to allow the petitioner to supply the required particulars even after the expiry of limitation. Therefore, it is permissible for the party to furnish particulars with the permission of the Court. Therefore, the election petition cannot be dismissed in limine on the ground of material facts are not pleaded.

(5) The counsel further contended that even in the case *V.*

*Narayanasamy v. C.P.Thirunavukkarasu* (2000 (2) S.C.C. 294), the Supreme Court has held that there is difference between material facts and material particulars. While the failure to plead material facts is fatal to the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. Material facts means the entire bundle of facts which would constitute a complete cause of action and these must be concisely stated in the election petition. The petitioner should also furnish the full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is filed. The counsel for the respondent submitted that the annexures to the election petition contains all those particulars relating to the places of erection of cut-outs, flags, etc., and the publication given in the newspapers and the vehicles used for propaganda were all furnished in the annexure. Annexure is also part of the election petition and therefore, necessary particulars are available in the annexures and hence pleaded. In support of his contention, the counsel for the respondent cited the decision of the Supreme Court in *Mohan v. Bhairon Singh Shekhawat* ((1996) 7 Supreme Court Cases 679), where it has been held that when averments contained in one part of the petition read with the annexures clearly raising certain triable issues were sufficient and rejection of the petition under Order VII, Rule 11 C.P.C. held illegal and unsustainable. The counsel for the respondent also relied upon the decision of the Supreme court in *D.Ramachandran v. R.V.Janakiraman and others* (1999 (3) S.C.C. 267), wherein it was held that assuming that the averments in the petition to be true, the Court has to find out whether the averments disclose a cause of action or triable issue and any of the reliefs prayed for could be granted. As per the decision in *Sri Udhav Singh v. Madhav Rao Scindia* (1977(1) S.C.C. 511, it has been held that a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Further, in *Manphul Singh v. Surinder Singh* (A.I.R. 1973 S.C. 2158), it has

been held that election petition need contain only material facts and not evidence therefor. For that, the counsel relied upon the decision in *H.D.Revanna v. G. Puttaswamy Gowda* (A.I.R. 1999, S.C. 768), the Supreme Court laid down as follows:

" As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars and if the Court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in *Balwan Singh v. Shri Lakshmi Narain*, (1960) 3 SCR 91: (AIR 1960 SC 770) held that, an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the Tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out."

Therefore, the counsel for the election petitioner contended that the consistent view of the Supreme Court is that material particulars are those facts which are necessary to amplify the material facts pleaded; If there is any ambiguity or insufficiency that could be rectified by amendment of the pleadings. Therefore, the particulars relating to the actual amount spent and actual places of erection of cutouts, banners, etc., can be given even by way of amending the pleadings. Therefore the contention that material facts have not been pleaded is not correct. (6) The counsel for the applicant further contended that "election" starts only on the date of nomination and ends with counting of votes; and hence, any expenditure incurred prior to the date of nomination cannot be taken into account for calculating the expenditure incurred; But the election petition does not give any date on which the expenditure was incurred. There are no details as to whether it is within these two dates. Therefore, the statement is not sufficient and definite, in so far as this aspect is concerned.

(7) With regard to this aspect, when evidence is recorded, any expenditure which does not expended between the period will be taken into account. Therefore, that cannot be said to affect the case of the applicant, in any way.

(8) Reading the election petition along with the annexure bearing the principles laid down by the Supreme Court in the above cited cases in mind shows that "material facts" have been pleaded; hence, the contention of the applicant that material facts have not been pleaded is not acceptable. Hence, it is rejected.

II. (1) The learned counsel for the applicant next contended that the object of the Act is to see that the returned candidate should not be taken for a ride and waste his time which he could devote to his constituency. He should not be kept under fear and Sword of Damocles'; it need not be kept hanging over his head. In support of his contention, he cited the decision reported in *Azhar Hussain v. Rajiv Gandhi* (1986 (Supp) S.C.C.315, wherein it was held,

" The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the

respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. "

Learned counsel for the applicant submitted that the election petitioner has not specifically stated that due to the expenditure made by the elected candidate, the election of the petitioner is materially affected. Further, the election petitioner has not given the number of votes secured by him and the votes secured by the other candidates. The counsel submitted that in the absence of any such pleadings, the trial of the election petition is nothing but vexatious and hence, the petition is liable to be dismissed.

(2) This argument of the learned counsel applicant is not acceptable.

Section 100 (1) of the Representation of the People Act enumerates the ground on which the election can be declared as void. Each of the grounds specified thereunder is independent in nature. Therefore, any one of the grounds if proved is sufficient to declare the election as void; that the election has been materially affected is only one of the grounds. Therefore, if ground (b) is proved, it is sufficient to declare the election as void. It is not necessary that Clause 100(1) (d) must also be proved. Hence, this argument of the counsel has no merits and hence rejected.

III (1) Learned counsel for the applicant next contended that the Election Petition is not in accordance with the rules. The Supreme Court has made a distinction in respect of the affidavit which is defective in nature and the affidavit which is not in accordance with Form-25 read with Rule 94-A. Form-25 clearly stipulates that the paragraphs have to be divided under two headings, viz.,

" True to my knowledge and  
True to my information."

The object of the Legislature for making such a distinction is to ensure that the allegations of corrupt practice are not made lightly nor to cast aspersions on the returned candidate, but to fix the responsibilities on the election petitioner. Proviso to Section 83(1) of the Representation of People Act provides,

" ...where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. "

Therefore, the affidavit prescribed under Form 25, Rule 94(A) is one of the basic ingredients of an Election Petition; it is mandatory in nature.

Non-compliance of that would result in the rejection of the application. In support of his arguments, he refers to the judgment of the Supreme Court in V.Narayanasamy v. C.P.Thirunavukkarasu (2000 (2) S.C.C. 294), wherein it has been held that the affidavit must conform not only to the form prescribed but also contain particulars as prescribed by the rules; Otherwise, the application is liable to be rejected at the threshold.

(2) Learned counsel further submitted that even after framing of issues, the Court shall reject the election petition on the ground of lack of material particulars. In support of his contention, the learned counsel relied upon the decision reported in 2000 (2) Supreme Court Cases 294, cited supra, wherein it was held that,

" The election petition read as a whole did not disclose any cause of action or triable issue. Considering the facts of the case and the principles of law applicable, the election petition was rightly dismissed by the High Court in limine. "

(3) The counsel further submitted that the affidavit filed along with the Election Petition is not in conformity with Form-25. The defective affidavit cannot be cured and therefore, the Election Petition has to be dismissed in limine.

(4) Learned counsel for the respondent submitted that a defect in the affidavit is curable. In support of his contention, he relies upon the decision in 2001 (3) S.C.C.276. The Election Petitioner has verified each and every paragraphs; He has also stated which are the paragraphs are "true to his knowledge" and which are the paragraphs are "based on information" and which paragraphs are "based on knowledge." Hence, there is no defect in the affidavit; It is in conformity with Form 25; Any alleged defect is curable. Further, he contended that in the affidavit it has been clearly stated that various paragraphs and Annexures-1 to 9 are partly true to his knowledge and partly true to his information. When a paragraph contains averments partly true to the knowledge and partly true to the information, such verification is permissible. It is not necessary to dissect and state the paragraphs which are true to the knowledge and which are true to his information. (5)

Learned counsel for the respondent in the application (Election Petitioner) submitted that if an affidavit in the prescribed form contains some mistake in verification, that cannot be a ground for summary disposal of the election petition. In support of that contention, the counsel relies upon the judgment of the Supreme Court in T.Phungzathang v. Hangkhanlian and others (2001 (8) S.C.C.) 35 8, where the Supreme Court held if the affidavit is in prescribed form, mistake in the verification portion thereof cannot be a ground for summary dismissal of election petition and therefore, the defect in the verification cannot be a ground to dismiss the election petition in limine and hence this application has no merits and hence it should be dismissed. Further, he submitted that in the case reported in 20 01 (8) S.C.C. 358, cited supra, the Supreme court has held that mistake in the verification portion cannot be a ground for summary disposal, provided the affidavit is in the prescribed form.

(6) In the present Election Petition filed, the verification is as follows:

#### V E R I F I C A T I O N

I, S.M. Raju, the petitioner abovenamed do hereby declare that what is stated in paragraph 1 of this petition is true to my knowledge and what is stated in paragraph 2 is based on information and what is stated in paragraph 3 is based on legal advice and what is stated in paragraphs 4 and 5 are based on information and also based on legal advice and information and I believe to be true and what is stated in paragraph 6, 7 and are based on my knowledge and partly based on information and I believe to be true and what is stated in para 9 is based on my knowledge and partly based on information and I believe to be true and what is stated in para 10 is based on information and I believe to be true and also on legal advice and what is stated in paragraphs 11 is based on legal advice and what is stated in paragraph 12 is based on legal advice and also based on knowledge and information and I believe to be true and what is stated in paras 13 and 14 are based on information and I believe to be true and also based on my knowledge and what is stated in paras 15 and 16 are based on knowledge and information and I believe to be true and what is stated in paras 17 and 18 are based on legal advice and what is stated in paras 19 and 20 are based on knowledge and what is stated in paragraphs 21,

22, 23, 24, 2, 26, 27 are based on my knowledge and what is stated in paragraph 28, is based on information and I believe to be true and what is stated in paragraph 29 is based on knowledge and what is stated in para 30 is based on information and I believe to be true and what is stated in para 32 is based on information and I believe to be true and what is stated in paragraph 31 is based on knowledge and what is stated in para 32 is based on information and I believe to be true and what is stated in paragraphs 33 and 34 are based on knowledge and information and I believe to be true and also based on legal advice and what is stated in paragraphs 35, 36, 37 and 38 are based on legal advice. "

From a perusal of it, it is seen that, paragraphs-4 and 5 are "based on information and also based on legal advice and information." Paragraphs-6, 7 and 8 are "based on knowledge and partly based on information.;" Para-9 is "based on knowledge and partly based on information." Paragraph-12 is based on legal advice and also based on knowledge and information.;" Paragraphs-15 and 16 are based on information and knowledge. Paragraphs-33 and 34 are based on knowledge and information. The counsel for applicant submitted that this is not in conformity with Form No.25.

(7) What is now contended by the applicant is that the affidavit filed in support of the election petition is not in the prescribed form; it is not a mistake in verification, but it is a defect in the form of affidavit. In the case V.Narayanasamy v. C.P.Thirunavukkarasu (200 0 (2) S.C.C. 294), cited supra, the verification made in the Election Petition readS as follows:

A F F I D A V I T

I, Mr.V.Narayanasamy, son of Velu, Hindu, aged about 50 years, residing at 5, Ellaiamman Koil Street, Pondicherry-1 now temporarily come down to Chennai, the petitioner in the election petition calling in question the election of Shri C.P. Thirunavukkarasu, the respondent in the election petition, makes solemn affirmation/oath and say:

(a) that the statements made in paras 7 to 10 of the accompanying election petition about the commission of the corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123 (1)(B) and (2) of the particulars of such corrupt practice mentioned in paras 7 to 10 of the same petition are true to my knowledge;

(b) that the statements made in paras 7 to 10 of the accompanying election petition about the commission of the corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paras 7 to 11 of the same petition are true to my information;

(c) that the statements made in para 11 of the accompanying election petition about the commission of corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in para 11 of the same petition are true to my information. "

The Supreme Court found that,

"Both the verification and the affidavit do not meet the requirement of law. "

The verification that "paras 7 to 10 .....are true to my knowledge" and the subsequent verification that, "paras 7 to 11 ..... are true to my information" does not meet the requirement of law. Such a verification was held to be a defective verification.

8. As extracted supra, the verification in this petition is that " paragraphs 4 and 5.....are based on information and also based on legal advice." Paragraphs 7 and 8.....are based on knowledge and partly based on information." "Paragraph 12 is based on knowledge and information" "Paragraphs 15 and 16 .....are based on information and knowledge" "paragraphs 33 and 34 are based on knowledge and information." This verification is similar to the verification made in the case reported in 2000 (2) S.C.C. 294. The decision reported in 2002 (8) S.C. C. 358, relied upon by the counsel for the respondent (Election Petitioner) is not applicable to the facts of this case. Mistakes in the affidavit is curable, provided the affidavit is in the prescribed form; When the affidavit is defective, it cannot be cured. The decision of the supreme Court in 2000 (2) S.C.C. 294 is directly on the point which is now before this Court; the facts of that case is similar to that in the present case. Therefore, the decision squarely applies to the present case; and hence, both the verification in the affidavit do not meet the requirements of law.

(9) In the same judgment, the Supreme Court refers to noncompliance of provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7 Rule 11 of C.P.C.; The Supreme Court in the very same case held that filing of the affidavit as required is not a mere formality; By naming a document as an affidavit, it does not become an affidavit. That is, the affidavit shall be in the prescribed.

(10) The counsel for the applicant relied upon another decision in Ananga Udhay Singh Deo v. Ranganth Mishra (2002 (1) S.C.C.499, in which the Supreme Court has held, that Election Petition is based on the rights which are purely the creature of the statute and if the statute renders any particular requirement mandatory, the Court cannot exercise dispensing powers to waive non-compliance. When the Court finds non-compliance, it has to uphold the preliminary objection and has no option except to dismiss the petition.

(11) The counsel for the applicant also refers to another judgment of the Supreme Court in R.P. Moiduthy v. P.T. Kunju Mohammed (2000 (1) S.C.C. 481), where the Supreme Court has held,

" The several averments relating to commission of corrupt practice by the first respondent as contained in paras 4 to 12 and 16 of the petition have been verified as true to the best of 'my knowledge and information'--both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge. "

It has further held in that case,

" In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice

could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings. "

(12) The counsel for the applicant also refers to the judgment of the Supreme Court in L.R. Shivarama Gowda v. T.M.Chandrasekaran (1999 (1) S.C.C.666), wherein it was held,

" We have already extracted paras (f) and (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit state that the averments therein are true to his information. Para (f) is silent on the aspect of the matter. Para (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No.25. Thus, there is a failure to comply with Rule 94-A of the Conduct of Election Rules. It is a very serious defect which has been overlooked by the High Court. "

The counsel further cited the decision of the Supreme court in Ravindersingh v. Janmeja Singh and others (2000 (8) S.C.C. 191), where the Supreme Court has held that,

" No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegations of corrupt practice under Section 123 (1) of the Act, as detailed in the election petition, no issue could be raised for trial. "

Learned counsel for the applicant therefore submitted that this Election Petition is liable to be dismissed.

(13) As already extracted, the verification in the present Election Petition contains the statement that the averments made in number of paragraphs were true to his knowledge and on the basis of information. This is not in accordance with Form 25. This is a defect which is not curable. Therefore, it is a fit case to be rejected at the threshold for non-compliance of the mandatory provisions of law as to pleadings.

14. Applying the principles laid down by the Supreme Court to the facts on hand, this election petition cannot be tried as no cause of action has arisen. The verification without specifying which of the allegations are true to the personal knowledge of the petitioner and which of the allegations are based on the information of the petitioner believed by him to be true does not satisfy the requirement of law. Neither the verification in the petition, nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were in his own knowledge. Further, for want of affidavit in the required form, the allegations of the corrupt practices cannot be tried. Inasmuch as the affidavit is not in the prescribed Form-25, it is a very serious defect, it cannot be overlooked by this Court. Therefore, the election petition as a whole does not disclose any cause of action or triable issue. Hence, the election petition is liable to be

dismissed. Hence, the original application is to be allowed.

5. In the result, this original application is allowed.  
18-9-2002.

Index: Yes

Web Site: Yes

vs

A.K. RAJAN, J.

Order

in

O.A. NO.405 of 2002

in

ELECTION PETITION NO.3 of 2000□